



Planning Department

FYI

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**MEMORANDUM**

**To:** Board of Appeals **Date:** May 21, 2008  
**From:** Roland Bartl, AICP, Planning Director *R.B.*  
**Subject:** Application # 08-03 – Richard A. Nylan, Jr. for Autoplex Realty (Leo Bertolami)  
50 Powder Mill Road (Town Atlas page J-3, parcel 49)

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**Background:**

This petition is about the same property and issue that was before the Board in May 2007. See attached decision #07-02, and the two related hearing minutes. At that time, the petitioner had requested that the Board overturn the Building Commissioner's ruling on section 6.7.2 of the zoning bylaw and to allow the storage of motor vehicles within the 30-foot setback area from Powder Mill Road, whereby these motor vehicles would be stored and displayed for sale under a Class I dealer license. At issue was whether the storage and display of vehicles for sale at this site and in this location was a pre-existing nonconforming use or not. I gather from the record that the legal nonconforming nature of mere customer or client parking in that same area for a business that may be located in the building on the same lot is not in dispute. In decision #07-02, the Board upheld the Building Commissioner's zoning determination. The petitioner appealed that decision to the Land Court where the matter is pending.

**Variance petition #08-03:**

Now the petitioner is trying another angle by seeking a variance from the requirement of section 6.7.2. As in petition #07-02, it is about the storage and display for sale of vehicles under a car dealer license, not about the parking of cars that belong to customers or clients to a business on the lot.

The petition attempts to make a case for a variance under the criteria of M.G.L. Ch.40A, §.10 and the requirement of the zoning bylaw. The zoning bylaw mirrors the statutory criteria, and adds that the Board must consider the requested variance in the context of the Town's master plan. The requirements of section 6.7.2 together with other zoning requirements for parking, storage and loading areas are direct recommendations of the 1990 master plan, unchanged in the 1998 update. In general, the thrust of a zoning bylaw is for all properties to eventually come into compliance with its standards and regulations. Variances by nature would sanction deviations if the statutory criteria warrant it.

## Observations:

1. The petitioner seems to contemplate only one kind of use for the property: an auto dealership. How is it a hardship, when the zoning district allows a myriad of other commercial land uses under which the area in question can continue to be used for customer or client parking?
2. The area in question is a wide open pavement area without landscaping, sidewalks, and anything that would distinguish Powder Mill Road from the property. If the Board were to find that a variance is appropriate in this case, I would request that such a variance be conditioned on:
  - o the installation of landscaped strips and a sidewalk along the entire property frontage, or such a sidewalk with tree islands for shade if not landscaped islands; and
  - o the reduction of curb cut sizes to the maximum standards and numbers in the zoning bylaw.

Such improvements could bring significant visual upgrade to this area which presently looks somewhat blighted. To the extent that the design and layout of such improvements requires the preparation of civil engineering plans and their review by Town staff, I would recommend continuation of the hearing until such plans are prepared, reviewed, and agreed upon. Should it go in this direction, I would further recommend that the Board require either the completion of such improvements within a set time period, say 1year, and a performance guarantee (passbook bond or cash deposit) to secure follow through to completion within that time frame.

Cc: Town Manager  
Planning Board  
Stephen P. Anderson  
Fire Chief  
Town Engineer

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